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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,736	03/07/2006	Carsten Schellenberg	CO2522947APCT	8745

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EXAMINER

MULCAHY, PETER D

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/570,736	Applicant(s) SCHELLENBERG ET AL.	
	Examiner Peter D. Mulcahy	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al. US 5,476,882.

3. The rejection set forth under 35 USC 103 in the paper mailed 6/25/08 is deemed proper and is herein repeated. The newly amended claims and remarks filed in support thereof have been fully considered but have been found not persuasive.

4. Applicant argues that the amount of stabilizer relative to the amount of polymer as claimed is much higher than that suggested in the art. This is not persuasive. Claim 1 is directed to a dispersion wherein the stabilizer is present in an amount, at least equal to that of the polymeric carrier. Brenner shows the polymerization in the presence of the light stabilizer. Prior to polymerization, once the stabilizer is added to the monomers, there is 0 polymer present. Once polymerization begins the claim limitation is met. It is understood that the polymerization takes place over time. As the polymerization progresses more and more polymer is formed. Example 1a at column 42 line 64 shows 10.4 grams of stabilizer. The claim limitation is met from the time in which the polymer is formed until the point in which more than 10.4 grams of polymer is

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formed. As such, this limitation is anticipated by the intermediate product of the examples.

5. The claimed ratio of stabilizer to polymer is further obvious from this disclosure. The portion of the art relied upon for the amount of stabilizer to be used is at column 36 lines 60-65. Here it is stated that the amount of stabilizer is 0.1-30% by weight, relative to the monomers. There is no upper limit as to the amount of stabilizer relative to the amount of polymer. IT is understood that the polymerization takes place in stages with the stabilizer present in at least one stage. It is reasonable to presume that the step wise formation results in a stage in which the amount of stabilizer is equal to or greater than the amount of polymer.

6. It is further obvious to use greater amounts of stabilizer given the general knowledge of one having ordinary skill in the art. These are known materials functioning as they are known to function. One of ordinary skill understands the function of light stabilizers. Using higher amounts of light stabilizers results in light stabilized polymeric compositions. The fact that Brenner does not specifically direct one to use the claimed amount of stabilizer does not render the claims patentable. One of ordinary skill has an expectation of the resultant properties. Obviousness does not require absolute predictability but rather a reasonable expectation of success. There is no showing or allegation of unexpected results of record. It is prima facie obvious to one of ordinary skill in the art to arrive at optimum proportions of ingredients by obvious experimentation.

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7. Applicants claims are seen to read on a master batch or concentrate. Master batch and concentrates are well known for increasing the dispersability of additives in polymeric compositions.

8. Applicants have amended the claims to require an oil in water polymerization. This is essentially a product-by-process limitation wherein the patentability is determined by the product. The polymeric product formed from oil and water polymerization is not patentably distinct from the polymeric product described in the prior art. The art is not limited to the polymerization techniques shown in the art. The disclosure is clear as to the fact that many polymerization techniques can be used in forming the polymers, see column 37 lines 51-57. US patent 4,290,932 appears to describe oil in water polymerization that falls within the scope of the claims.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter D. Mulcahy whose telephone number is 571-272-1107. The examiner can normally be reached on Mon.-Fri. 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter D. Mulcahy/
Primary Examiner, Art Unit 1796